
UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF VIRGINIA, CHARLOTTESVILLE DIVISION

Plaintiff/Counter Defendant)
v.) Case No. 3:17-CV-00089 (NKM/JCH)
Emily Gorcenski,)
Kristopher Goad,)
Defendants/Counter Claimants)

**DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME TO FILE THEIR
RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

Defendants/Counter Claimants Emily Gorcenski and Kristopher Goad (collectively, "Defendants"), by counsel, respectfully request an enlargement of time of an additional twenty-one (21) days to respond to Plaintiff's Motion for Leave to Amend the Complaint (ECF Nos. 22, 23), and accordingly request the Court to issue an order setting the new deadline for Defendants' response as April 23, 2018. In support of this Motion for Enlargement of Time, Defendants state as follows:

1. Plaintiff Christopher Cantwell initiated this action by filing a complaint in this Court on December 28, 2017 (the "Complaint", ECF No. 1), which was thereafter served on Defendants. Defendants filed an Answer to the Complaint (the "Answer") on February 12, 2018 (ECF No. 9).

2. At a scheduling conference held by telephone on March 5, 2018 before Hon. Joel C. Hoppe, Plaintiff's counsel notified the Court of his intent to file an Amended Complaint in this case. As the time to amend the Complaint as a matter of course pursuant to Rule 15(a)(1)(B) had lapsed, Plaintiff's counsel informed the Court and counsel for

Defendants that Plaintiff would file a Motion for Leave to Amend pursuant to Rule 15(a)(2). Plaintiff's counsel indicated that he did not expect the amendments to significantly alter the factual allegations or legal claims stated in the original Complaint, and that he would try to file the Motion for Leave to Amend by March 19, 2018.

3. On March 19, Plaintiff filed the Motion for Leave to Amend and Proposed Amended Complaint via the Court's ECF system. The Proposed Amended Complaint contained references to a number of new Exhibits, including both photographic and video Exhibits. Notably, none of the new Exhibits were filed in ECF as attachments to the Proposed Amended Complaint, including the photographic Exhibits which would have normally been included in the electronic filing as a matter of course. Several of the new Exhibits were also video Exhibits, which cannot be filed electronically in ECF.

4. Plaintiff's counsel sent a CD containing electronic copies of the Exhibits to one of Defendants' attorneys, Sandra C. Freeman, via U.S. Mail. Ms. Freeman did not receive the CD containing the Exhibits by mail until Saturday March 24, 2018. These additional Exhibits were docketed as received by the Clerk of this Court on March 26, 2018. ECF No. 27.

5. The Proposed Amended Complaint and Exhibits do not merely add additional theories of recovery to facts already pled in the original Complaint, or nor do they simply add more detail to facts already pled. Rather, the Proposed Amended Complaint contains extensive new factual allegations that are entirely outside the scope of the facts pled in the original Complaint, including an elaborate and convoluted new conspiracy theory alleging a large number of new facts and involvement of individuals not referenced in the original Complaint.

6. The original Complaint was 16 pages long. The Proposed Amended Complaint

is 88 pages long, plus additional extensive new Exhibits.

7. Pursuant to Local Rule 15(c)(1), Defendants' response to Plaintiff's Motion for Leave to Amend the Complaint would (most conservatively) be due on April 2, 2018, fourteen days from the date the Motion for Leave to Amend was filed in ECF on March 19. Defendants note, however, that the new Exhibits to the Proposed Amended Complaint were not received by either Defendants or the Court until Saturday March 24 and Monday March 26, respectively.

8. In light of the extensive new factual allegations and complicated new legal claims stated in the Proposed Amended Complaint, along with the delay in receiving the new Exhibits, counsel for Defendants represent to the Court that they require additional time to adequately conduct reasonable investigation into the new factual allegations made in the Proposed Amended Complaint, and to consider their application to the new legal claims made therein. Counsel believes this to be consistent with their ethical obligation to conduct a reasonable investigation in an attempt to ascertain the true facts in this case prior to filing any response to Plaintiff's Motion for Leave to Amend.

9. Counsel for Defendants also all have numerous client obligations in other cases, with various filing deadlines and court dates falling in the upcoming weeks. The time period between the date of this filing and April 12, 2018 is particularly and uncharacteristically busy for all three of Defendants' attorneys.

10. Given the extensive time (nearly 12 weeks) that passed between the filing of Plaintiff's original Complaint and the Motion for Leave to Amend the Complaint, the nature of the action, and the fact that a hearing on the Motion for Leave to Amend has not yet been scheduled before this Court, Defendants are not aware of any reason why the requested

Enlargement of Time to Respond to Plaintiff's Motion for Leave to Amend should prejudice Plaintiff.

For all of the foregoing reasons, Defendants respectfully request that the Court grant this Motion for Enlargement of Time, and issue an order setting April 23, 2018 as the due date for Defendants' response to Plaintiff's Motion for Leave to Amend the Complaint, along with any other such relief as the Court deems just and proper. A proposed Order granting this request is filed as an Attachment to this Motion.

Respectfully submitted,
EMILY GORCENSKI
KRISTOPHER GOAD
By Counsel

March 28, 2018

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CERTIFICATE OF SERVICE

I, Pamela Starsia, hereby certify that on March 28, 2018, I electronically filed the foregoing Defendants' Motion for Enlargement of Time with the Clerk of the Court for the United States District Court for the Western District of Virginia by using the CM/ECF system. I certify that counsel for all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 28, 2018.

/s/ Pamela Starsia
Pamela Starsia